



The Commonwealth of Massachusetts

Department of Revenue

Leverett Saltonstall Building,

100 Cambridge Street, Boston 02204

L. JOYCE HAMPERS
COMMISSIONER

September 25, 1980

(the "Corporation") is an out-of-state corporation registered as a Massachusetts vendor. It intends to sell an item of tangible personal property in Massachusetts to Company A. Company A does not sell tangible personal property in the regular course of its business, but on this occasion will immediately resell the property to a wholesale dealer (Company B). It will make no use of the property other than to resell it. You inquire on behalf of the Corporation whether it may take a resale certificate from Company A on its sale of the item, in lieu of collecting the Massachusetts sales or use tax, and whether the sale to Company A will be a casual and isolated sale exempt from tax.

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise upon sales at retail of tangible personal property in Massachusetts by any vendor. "Sale at retail" is defined in Chapter 64H, Section 1(13) as a sale of tangible personal property for any purpose other than resale in the regular course of business. Under Chapter 64H, Section 8, the burden of proving that a sale of tangible personal property by any vendor is not a sale at retail is upon the vendor unless he takes a resale certificate from the purchaser; the certificate relieves the vendor from the burden of proof only if taken in good faith from a registered vendor engaged in the business of selling tangible personal property.

Chapter 64H, Section 6(c) provides that casual and isolated sales by a vendor not regularly engaged in the business of making sales at retail are exempt from tax.

Based on the foregoing, it is ruled that:

- (a) Company A may not give a resale certificate pursuant to the sale because it is not a registered vendor engaged in the business of selling tangible personal property; and
- (b) the sale by the Corporation to Company A will not be a casual and isolated sale within the meaning of Chapter 64H, Section 6(c).

Therefore, the sale will be subject to Massachusetts tax.

Very truly yours,

A handwritten signature in dark ink, appearing to read "L. Joyce Hampers", written in a cursive style.

L. Joyce Hampers
Commissioner of Revenue

LJH:JXD:mf

LR 80-61